

Montana Water Court
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FILED
04/18/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40A-0307-R-2022
Lockman, Melissa
9.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANT: The Glennie Ranches Inc.; Perry J. & Lynnda K.
Langston Trust

ON MOTION OF THE MONTANA WATER COURT

CASE 40A-0307-R-2022

40A 143335-00
40A 143366-00
40A 192520-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned claims appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. Claims 40A 143335-00 and 40A 143366-00 are owned by The Glennie Ranches, Inc. Claim 40A 192520-00 is co-owned by The Glennie Ranches, Inc. and the Perry J. & Lynnda K. Langston Trust. The claims received issue remarks and were called in on motion of the Water Court.

FINDINGS OF FACT

1. All three claims received the following issue remark:

THIS CLAIM WILL BE CALLED IN DURING THE NEXT DECREE IN THIS BASIN TO COMPLY WITH THE ORDER GRANTING MOTION TO CONFORM DATED MARCH 2, 1987.

2. In its motion to conform, the Board of Land Commissioners requested the following modifications to the claims:

40A 143335-00

1. The following water rights were filed by lessees of State land, or other individuals, for water rights used exclusively on state school trust lands. The State did not file claims to these water rights however, pursuant to the Pettibone decision the following rights should be decreed to the state in their entirety:

FILED

179867, 179829, 179830, 179831
036581
113101
143335
198219, 198223
208319, 208321, 208274, 208323, 208325, 208285, 208282, 208281,
208300, 208310
198867, 198868
198267
198404
197989, 197989
186786, 045701
022202
048695

40A 143366-00

143366: AMEND Point of diversion number 02 and place of use number 002
from S $\frac{1}{2}$ Section 2, T5N, R13E to: N $\frac{1}{2}$ S $\frac{1}{2}$ of said Section 2.
DELETE Point of diversion number 04 and place of use number 004
describing S $\frac{1}{2}$ Section 6, T5N, R14E .
(Duplicates State's Water Right #136136)

40A 192520-00

192520: DELETE point of diversion number 10 and place of use number 010
describing S $\frac{1}{2}$ S $\frac{1}{2}$ Section 16, T6N, R14E.
(Duplicates State's Water Right #137410)

3. The Court set a deadline for the State to file evidence supporting any modifications they intended to pursue.

4. The State filed statements of non-interest for claims 40A 143335-00 and 40A 192520-00, because the claimed priority dates are pre-statehood. (Docs.¹ 5.00, 6.00).

5. For claim 40A 143366-00, the State requested modifications to Point of Diversion/Place of Use Nos. 2 and 4 as follows:

- Point of Diversion (POD)/Place of Use (POU) No. 2 should be amended so that the Section claimed is the N2S2 of Section 2, Township 5N, Range 13E, Sweet Grass County, Montana. Currently, all of S2 is claimed; the State owns the S2S2, but Fish Creek, the source and location of the claimed water, does not flow onto this property. (Declaration (Decl.) of Dennis Meyer, ¶ 2, Exhibit (Exh.) A.)
- POD/POU No. 4 should be removed from the claim. *Dept. of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985) applies, and the claim is redundant with the State's Claim No. 40A 136136-00. The tract was acquired by the State on November 4, 1907, and the General Land Office survey was accepted on November 22, 1877. (Decl. Meyer, ¶¶ 3–4, Exhs. B, C.) The claimed priority date is October 1, 1932. *Id.*, Exh. D.

6. Glennie Ranches filed a response stating they did not object to the State's proposed corrections to claim 40A 143366-00. (Doc. 8.00).

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

9. A lessee who makes an appropriation of water on school trust land does so on behalf of the State. *Dep't of State Lands v. Pettibone*, 216 Mont. 361, 368, 702 P.2d 948, 952 (1985).

10. The title to a water right appropriated on school trust land vests in the State. *Pettibone*, 216 Mont. at 376, 702 P.2d at 957.

11. Although certain land sections were given to the State by the federal government for school trust purposes in the Enabling Act, title could not vest until after the land was surveyed, the plat was approved by the proper federal authorities, and the State was admitted to the Union. (See *Clemmons v. Gillette*, 33 Mont. 321, 83 P. 879 (1905); *Powell County v. 5 Rockin' MS Angus Ranch, Inc.*, 324 Mont. 204, 102 P.3d 1210(2004)).

If, at the time of the appropriation, title was not vested in the State, the claim is properly owned by the private appropriator. A water right claim on State land may also be properly owned by a private appropriator if that private appropriator has compensated the State for the ownership of the water right claim.

CONCLUSIONS OF LAW

40A 143335-00 and 40A 192520-00

1. The statements of non-interest resolve the issue remarks on claims 40A 143335-00 and 40A 192520-00. The elements of the claims should remain as they appeared in the Basin 40A Preliminary Decree, and the issue remarks should be removed from the claim abstracts.

40A 143366-00

2. The State established by a preponderance of the evidence that the S2S2 of Section 2, T5N, R13E should be removed from the point of diversion and place of use claimed in the S2 of Section 2, T5N, R13E. The S2S2 of Section 2 is owned by the State and the claimed source, Fish Creek, does not cross this area. The point of diversion and place of use claimed in the S2 of Section 2, T5N, R13E should be modified to the N2S2 of Section 2, T5N, R13E.

3. The State also established by a preponderance of the evidence that the point of diversion and place of use claimed in the S2 of Section 6, T5N, R14E vested in the State before the claimed priority date. This legal land description duplicates the State's claim 40A 136136-00, therefore the S2 of Section 6, T5N, R14E should be removed from the claim.

4. The modifications described in Conclusion of Law Nos. 2 and 3 resolve the issue remark on claim 40A 143366-00, and the remark should be removed from the claim abstract.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Perry J. & Lynnda K. Langston Trust
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Service via Electronic Mail

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 143335-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

***Owners:** GLENNIE RANCHES INC, THE
% JANE GLENNIE, PRES
PO BOX 207
TWO DOT, MT 59085 0207

Priority Date: JULY 19, 1883

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF FISH CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENE	32	6N	14E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE	32	6N	14E	WHEATLAND

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 143366-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

***Owners:** GLENNIE RANCHES INC, THE
% JANE GLENNIE, PRES
PO BOX 207
TWO DOT, MT 59085 0207

Priority Date: OCTOBER 1, 1932

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: FISH CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2	1	5N	13E	SWEET GRASS
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2		N2S2	2	5N	13E	SWEET GRASS
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3		S2	3	5N	13E	SWEET GRASS
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4		NW	8	5N	14E	SWEET GRASS
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
5		SENE	36	6N	14E	WHEATLAND
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
6		S2	36	6N	14E	WHEATLAND
Period of Diversion: JANUARY 1 TO DECEMBER 31						

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2	1	5N	13E	SWEET GRASS
2			N2S2	2	5N	13E	SWEET GRASS
3			S2	3	5N	13E	SWEET GRASS
4			NW	8	5N	14E	SWEET GRASS
5			SENE	36	6N	14E	WHEATLAND
6			S2	36	6N	14E	WHEATLAND

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 192520-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: GLENNIE RANCHES INC, THE
% JANE GLENNIE, PRES
PO BOX 207
TWO DOT, MT 59085 0207

LANGSTON, PERRY J & LYNDA K TRUST
14411 235TH ST SE
SNOHOMISH, WA 98296

Priority Date: JULY 19, 1883

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: AMERICAN FORK

Source Type: SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF AMERICAN FORK.

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2S2	22	6N	13E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S2S2	23	6N	13E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		S2	24	6N	13E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N2N2	26	6N	13E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		N2N2	27	6N	13E	WHEATLAND

Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
6		N2	13	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
7		NWSW	13	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
8		NESE	14	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
9		S2SE	14	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
10		S2S2	16	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
11		SESE	17	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
12		N2	19	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
13		NWSW	19	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
14		N2N2	20	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
15		N2N2	21	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
16		N2	22	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
17		N2N2	23	6N	14E	WHEATLAND	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE					
Period of Use:		JANUARY 1 TO DECEMBER 31					
Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2S2	22	6N	13E	WHEATLAND

2	S2S2	23	6N	13E	WHEATLAND
3	S2	24	6N	13E	WHEATLAND
4	N2N2	26	6N	13E	WHEATLAND
5	N2N2	27	6N	13E	WHEATLAND
6	N2	13	6N	14E	WHEATLAND
7	NWSW	13	6N	14E	WHEATLAND
8	NESE	14	6N	14E	WHEATLAND
9	S2SE	14	6N	14E	WHEATLAND
10	S2S2	16	6N	14E	WHEATLAND
11	SESE	17	6N	14E	WHEATLAND
12	N2	19	6N	14E	WHEATLAND
13	NWSW	19	6N	14E	WHEATLAND
14	N2N2	20	6N	14E	WHEATLAND
15	N2N2	21	6N	14E	WHEATLAND
16	N2	22	6N	14E	WHEATLAND
17	N2N2	23	6N	14E	WHEATLAND